

**IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF PENNSLYVANIA**

AGERE SYSTEMS, INC., CYTEC INDUSTRIES
INC., FORD MOTOR COMPANY, SPS
TECHNOLOGIES, LLC, and TI GROUP
AUTOMOTIVES LLC,

Plaintiffs,

-against-

ADVANCED ENVIRONMENTAL TECHNOLOGY
CORPORATION, ET AL.,

CIVIL ACTION NO. -
02-CV-3830

**ANSWER AND AFFIRMATIVE DEFENSES OF CARPENTER TECHNOLOGY
CORPORATION TO FIFTH AMENDED COMPLAINT TOGETHER WITH
COUNTERCLAIMS AND CROSSCLAIMS**

Defendant Carpenter Technology Corporation ("Defendant"), by way of
answer to the enumerated paragraphs of the Plaintiffs' Fifth Amended Complaint
("Complaint") says:

1. The allegations of paragraph 1 state conclusions of law to which no
responsive pleading is required and are therefore denied. To the extent that a responsive
pleading is required, Paragraph 1 of the Complaint contains allegations characterizing the
allegations of the Complaint, and, as a written document, Defendant alleges that the Complaint
speaks for itself.

2-15. Denied. The allegations in paragraphs 2-15, inclusive are denied as
conclusions of law to which no response is required and /or denied because Defendant lacks
knowledge sufficient to form a belief as to the truth of those allegations.

16. Denied. Defendant lacks knowledge sufficient to form a belief as to the truth of those allegations in this paragraph. By way of further answer, the alleged agreement among the Plaintiffs “that they will, at some time in the future, and not in this civil action, reach final allocation among themselves” is substantively improper, unenforceable as against public policy, and conflicts with this Court’s duty to allocate recoverable costs among liable parties using such equitable factors as the Court determines are appropriate.

17-24. Denied. The allegations in paragraphs 17-24, inclusive are denied as conclusions of law to which no response is required and /or denied because Defendant lacks knowledge sufficient to form a belief as to the truth of those allegations. By way of further answer, the OU-1 AOC, OU-1 Consent Decree and OU-2 Consent Decree are writings which speak for themselves.

JURISDICTION AND VENUE

28-31. The allegations of paragraphs 28 through 31, inclusive, of the Complaint are deemed to be denied in that they state conclusions of law to which no answer is required.

PARTIES

32-38. Paragraphs 32 through 38, inclusive, of the Complaint are not directed at Defendant and therefore no responsive pleading is required. To the extent that a responsive pleading is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 29 through 36 of the Complaint.

DEFENDANT CARPENTER TECHNOLOGY CORPORATION

39. Admitted.

40. Denied in part and admitted in part. By way of further answer, Defendant denies that its pickle liquor constituted waste, but admits that some of it was removed by DeRewal Chemical.

41. Denied. Carpenter specifically denies that its pickle liquor solution is a waste disposed of at the Site and strict proof thereof is demanded at trial. By way of further answer Defendant avers that its pickle liquor was recycled.

42. Denied. Carpenter denies that its pickle liquor constitutes waste.

43-60. Paragraphs 43 through 60, inclusive, of the Complaint are not directed at Defendant and therefore no responsive pleading is required. To the extent that a responsive pleading is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 43 through 60 of the Complaint.

COUNT I
(CERCLA section 107(a))

61. The responses to paragraphs 1 through 60 are incorporated by reference as if set forth here in full.

62-69. The allegations of paragraphs 62 – 69, inclusive, are deemed to be denied in that they state conclusions of law to which no answer is required and /or denied because Defendant lacks knowledge sufficient to form a belief as to the truth of those allegations. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant prays that judgment be entered in its favor and against Plaintiffs together with costs, including reasonable attorney fees and such other relief and further relief as the Court shall deem just and proper.

COUNT II
CERCLA Section 113(f)

70. The responses to paragraphs 1 through 69 are incorporated by reference as if fully set forth here.

71-74. The allegations of Paragraphs 71 through 74, inclusive, are deemed to be denied in that they state conclusions of law to which no answer is required and /or denied

because Defendant lacks knowledge sufficient to form a belief as to the truth of those allegations.

To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant prays that judgment be entered in its favor and against Plaintiffs together with costs, including reasonable attorney fees and such other relief and further relief as the Court shall deem just and proper.

COUNT III

(CERCLA Section 113(g)(2) Declaratory Judgment)

75. The responses to Paragraph 1 through 74 are incorporated by reference as if fully set forth here in full.

76-77. The allegations of paragraphs 76 through 77, inclusive, are deemed to be denied in that they state conclusions of law to which no answer is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant prays that judgment be entered in its favor and against Plaintiffs together with costs, including reasonable attorney fees and such other relief and further relief as the Court shall deem just and proper.

COUNT IV

Pennsylvania Hazardous Sites Cleanup Act

78. The responses made to paragraphs 1 through 77 are incorporated by reference as if set forth here in full.

79-85. The allegations of paragraphs 79-85, inclusive are denied in that they state conclusions of law to which no answer is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant prays that judgment be entered in its favor and against Plaintiffs together with costs, including reasonable attorney fees and such other relief and further relief as the Court shall deem just and proper.

AFFIRMATIVE DEFENSES

Defendant, without admitting any liability, hereby asserts the following defenses:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or part, to state claims against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The claims set forth in the Complaint are barred, in whole or in part, by the statutes of limitation applicable to each claim.

THIRD AFFIRMATIVE DEFENSE

Any and all damages suffered by Plaintiffs resulted solely and entirely from the conduct of Plaintiffs and/or other individuals or entities over which Defendant had no control. Defendant exercised no control over such persons and is not liable for any harm to Plaintiffs, or any other party, and the acts or omissions of such other persons constitute intervening causes of any harm suffered by Plaintiffs, and any other party.

FOURTH AFFIRMATIVE DEFENSE

Arguendo, but without admission, to the extent that Plaintiffs incurred response costs consistent with the National Contingency Plan and Spill Act, Defendant is not responsible for any unreasonable costs incurred for the remedial actions taken at the Site.

FIFTH AFFIRMATIVE DEFENSE

The claims set forth in the Complaint are barred, in whole or in part, by the equitable doctrines of estoppel, waiver and laches.

SIXTH AFFIRMATIVE DEFENSE

Because the harm, if any, is divisible and there is a reasonable basis for dividing the harm, joint and several liabilities may not be imposed. Plaintiffs are not entitled to recover from Defendant more than Defendant's fair, equitable, and proportionate share, if any, of the costs and damages sought by individual Plaintiffs or to otherwise recover from Defendant more than the amount of such relief, if any, for which Defendant is liable.

SEVENTH AFFIRMATIVE DEFENSE

If any release or threat of release of a hazardous substance has occurred or is occurring at the Site, the hazardous substance neither was contained in any wastes allegedly attributable to Defendant, nor was the hazardous substance similar to any constituents in wastes allegedly attributable to Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a cause of action under CERCLA insofar as the costs that have been incurred by Plaintiffs or that will be incurred by Plaintiffs: (a) are not response costs within the meaning of CERCLA or the Spill Act or; (b) are not response costs that are consistent with the National Contingency Plan.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for recovery of attorneys' fees are barred, in whole or in part, by applicable case law.

TENTH AFFIRMATIVE DEFENSE

Upon information and belief, the acts or omissions of Defendant, if any, did not proximately cause any of the response costs or damages of which Plaintiffs now complains, therefore no liability exists on the part of Defendant for any such response costs or damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' CERCLA contribution claims are barred, in whole or in part, to the extent that they have not been asserted during or following a civil action under Section 9613(f) of CERCLA. Plaintiffs' HSCA contribution claims are barred, in whole or in part, to the extent that they have not been asserted during or following a civil action under Section 507 or 1101 of HSCA, as is statutorily required under Section 705 of HSCA.

TWELFTH AFFIRMATIVE DEFENSE

Defendant is not a person subject to liability under Section 104 (a)(3) or Section 107(a) of CERCLA or Section 701 (a)(3) of HSCA because Defendant did not arrange for the disposal or treatment of any hazardous substances at the Site.

THIRTEENTH AFFIRMATIVE DEFENSE

Arguendo, but without admission that any hazardous substance for which Defendant may be liable was treated or disposed of at the Site, such are not present in and have not contributed to any release or threat of release at the Site.

FOURTEENTH AFFIRMATIVE DEFENSE

Without admission that Plaintiffs are entitled to any recovery, any such recovery is barred by or must be apportioned under the doctrines of contributory or comparative fault or negligence.

FIFTEENTH AFFIRMATIVE DEFENSE

The amount and scope of the Plaintiffs' claims against the remaining non –settling defendants should be reduced by the greater of the equitable share of the liability of all settling defendants or the dollar amounts obtained by Plaintiffs from all settling defendants. In addition, the amount and the scope of the Plaintiffs' claim against the remaining non-settling defendants should be further reduced by at least the equitable share of the liability of all liable parties that Plaintiffs elected not to sue.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiffs may not recover from Defendant any amounts that exceed the portion of costs or damages sought that are attributable to any release or threat of release of any hazardous substance allegedly disposed by Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant is entitled to an offset against any liability on its part, if any, for the greatest of (1) any amounts actually paid by any person or entity heretofore or hereafter for any of the injuries, cost, damages and expenses alleged in the Plaintiffs' Complaint; or (2) any amounts stipulated or otherwise agreed to in any release of or covenant not to sue any person or entity heretofore or hereafter for any of the injuries, costs, damages and expenses alleged in the Plaintiffs' Complaint; or (3) the equitable share of the liability of any person or entity that heretofore has received, or hereafter receives, any release from liability or covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the Plaintiffs' Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to join necessary parties needed for a just adjudication of the claims asserted in this action, win whose absence complete relief cannot be accorded the existing parties.

NINETEENTH AFFIRMATIVE DEFENSE

The volume and toxicity of any substance that might have been disposed by Defendant to the Site are de minimis -- both in absolute terms and relative to the contributions of other responsible parties -- and therefore insufficient, as a mater of law and pursuant to the de minimis non curat lex doctrine, to give rise to any liability of Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims for contribution and declaratory relief are barred in whole or in part by each Plaintiffs' failure to prove that each Plaintiff has paid or is obligated to pay more than its equitable share of the Site costs.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant incorporates by reference all other applicable defenses set forth in the answers of the other defendants to the Plaintiffs' Complaint and, further, will rely upon all defenses which become available during discovery or trial.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Neither Plaintiff TI Group Automotive Group Systems, LLC ("TI"), with respect to its claims for recovery of costs associated with the first phase of remedial design and action for the Boarhead Site (designated as OU-1), nor Agere Systems, Inc. ("Agere") can recover contribution from Defendant under Section 113 of CERCLA because neither was or is a party to an underlying civil action against it under Sections 106 or 107(a) of CERCLA, nor did TI or Agere resolve any liability or potential liability to the United States or to a state in an administrative or judicially approved settlement as required by Sections 113(f)(3)(B) of CERCLA, nor were their contribution claims asserted during or following a civil action under Section 106 or 107(a) of CERCLA.

TWENTY-THIRD AFFIRMATIVE DEFENSE

None of the Plaintiffs has alleged sufficient facts to establish liability under Sections 113 of CERCLA as they did not discharge the common liability, including the liability, if any, of the Defendants, to the United States for such claims in a settlement if the United States' claims against them, nor have any of the Plaintiffs made or alleged to have made actual payment to the United States in excess of such Plaintiff's fair share of common liability.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant is not a person who is liable or potentially liable under Sections 107(a) of CERCLA, 42 U.S.C. 9607(a), or Section 103 of HSCA, and therefore, is not a person from which Plaintiffs may seek contribution under Section 9613(f) of CERCLA, or Sections 701, 702(a)(3) and 1101 of HSCA.

RESERVATION OF DEFENSES AND AFFIRMATIVE DEFENSES

Defendant intends to rely upon such other defenses and affirmative defenses as may be necessary as this case proceeds to trial and reserves the right to amend this Answer and Affirmative Defenses. In addition, Defendant incorporates by reference such other applicable defenses and affirmative defenses as set forth in the answers of the other defendants named in the Fifth Amended Complaint that are not contrary to Defendant's interests.

WHEREFORE, Defendant prays that the Complaint be dismissed with prejudice, that costs be awarded against the Plaintiffs, and that Defendant be granted such other and further relief as the Court may deem just and proper.

CONTRIBUTION COUNTERCLAIMS/CROSS-CLAIMS

Defendant hereby refers to and incorporates herein by reference paragraph 1 of the June 18, 2004 Fifth Case Management Order, which states that each of the defendant's answers shall be deemed to raise cross-claims and counterclaims for contribution pursuant to CERCLA and the

Pennsylvania Hazardous Site Cleanup Act, and that all such cross-claims and counterclaims shall be deemed denied by each defendant.

Respectfully submitted,

BOOTH & TUCKER, LLP

DATED: January 31, 2008

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CERTIFICATE OF SERVICE

I, Christopher R. Booth, Jr., Esquire, hereby certify that I am an Attorney admitted to the bar of this court, and on this day a copy of Defendant, Carpenter Technology Corporation's foregoing Answer to the Fifth Amended Complaint, Affirmative Defenses and Counterclaim was sent by first class mail to each of the following:

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/s/ Christopher R. Booth, Jr.

Dated: January 31, 2008